

## CHAPTER VIII

# **REAL PROPERTY ACQUISITION**

### **General Requirements**

Real property acquisition requirements apply to all projects where federal funds, including CDBG and HOME, are being used as part of the project. When using federal funds, there are two types of real property acquisitions, voluntary and involuntary.

The acquisition requirements apply in most instances, including situations wherein properties are acquired by a non-profit entity or a private for-profit entity, such as a business to which the HOME contractor has made a loan or grant. This chapter explains major requirements associated with real property acquisition under the Uniform Relocation Act (URA). These acquisition requirements apply to both residential and commercial properties.

All required forms, letters and guidelines are found in Chapter 5 of the HUD Handbook 1378, Tenant Assistance and Relocation and Real Property Acquisition.

### **HOME Contractor Responsibilities**

The responsibilities of HOME contractors vary depending on whether the acquisition is voluntary or involuntary.

#### **1. Voluntary Acquisition**

HOME contractors do not have to follow the federal requirements for land acquisition. If the acquisition is by an entity with the power of eminent domain, but is clearly a voluntary, arm's length transaction; such transactions must meet all of the following conditions:

- The HOME contractor determines and informs the owner(s) in writing that it will not use its power of eminent domain to acquire a property if negotiations fail to result in an amicable agreement;
- No specific site or property is designated for acquisition, although the agency may limit its search for sites to a general geographic area. Where an agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly. The property to be acquired shall not be part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

- The agency informs the owner(s) of its estimate of the fair market value of the property being considered. The notice must be in writing and must be provided before the seller enters into the contract for sale on which the purchase is based. An appraisal is not required. However, a person familiar with real estate values must prepare the estimate and the agency's files must include an explanation of the basis for the estimate.

When the private developer or CHDO, which does not have the authority to acquire the property by eminent domain, acquires a property, the private developer is required to inform the seller before he or she enters into the sales contract of the following:

- The developer does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement;
- The developer is required to provide its estimate of the fair market value of the property. An appraisal is not required. However, the files must include an explanation, with reasonable evidence, of the basis for the estimate. Whenever feasible, this information shall be provided before making a purchase offer. In those cases where there is an existing option to purchase or a contract, the seller must be provided an opportunity to withdraw after this information is provided.

A private developer or CHDO does not have the authority to acquire real property from a federal agency, State, or State agency.

## 2. **Involuntary Acquisition**

In a case where the HOME contractor intends to use eminent domain, if needed, or where the property is part of a specific project (meaning it will be acquired sooner or later), the agency must comply with the following federal acquisition requirements for an involuntary sale:

- a. **Notification:** As soon as the decision to acquire has been made and prior to negotiation, the agency must issue a Notice of Decision to Appraise (Appendix VIII-B). The notice should include the following items:
  - A description of the boundaries of the specific area being considered for a particular public use;
  - A statement that the owner's property has been determined to be located within the area and that the property may be acquired in connection with the public use; and
  - A general description of the property.

- b. **Land Acquisition Procedures:** At the time the agency notifies the owner of its decision to appraise, it is required to furnish the owner with a Notice of Land Acquisition Procedures. The notice must include the following information:
- A description of the basic objective of the public entity's land acquisition program and a statement explaining relocation benefits for which an owner-occupant may be eligible;
  - A statement that if the acquisition of a part of the property leaves an unmarketable remnant, the grantee will offer to acquire the remnant if the owner desires;
  - A statement that should the owner not be satisfied with the agency's offer of just compensation, the owner will be given an opportunity to present relevant material, and if a voluntary agreement cannot be reached, the agency will either begin formal condemnation proceedings against the property or abandon its effort to acquire the property;
  - A statement that construction or development shall be scheduled so that no person will be required to move before receiving a 90-day written notice;
  - A statement that if the agency permits an owner or tenant to occupy the property to be acquired on a short-term basis, the amount of rent required shall not exceed the lesser of the fair market rent of a short-term occupier or the prorata portion of the fair rental value for a normal rental period; and
  - A statement that the rent for the dwelling shall be within the financial means of the occupant.

**Note:** This notice and all other such notices must be sent by certified or registered mail, return receipt requested, or hand delivered and receipt documented. If the recipient does not read or understand English, the agency must provide translation and assistance. Each notice should indicate the name and telephone number of a person who may be contacted for further information.

- c. **Appraisal Procedures:** The next step in real property acquisition involves obtaining an unbiased and independent appraisal of the value of the property, reviewing the appraisal, and determining just compensation. The appraisal procedures must include the following:

- The HOME contractor must select a reputable independent appraiser. The appraiser should have no interest in the property to be acquired. The Contractor should request statements of qualifications and cost estimates from several appraisers. After review and screening of candidates, the Contractor selects an appraiser. A minimum of one appraisal is required. However, if the project is potentially controversial, (for example, if the seller is unwilling) or if property values are high, it is recommended that two independent appraisals be conducted.
- The HOME contractor must execute a professional services contract with the selected appraiser. The contract must require the appraiser to invite the property owner to accompany the appraiser during the property inspection (See sample letter in Appendix VIII-C for “Invitation For Property Owner To Accompany An Appraiser”). This notice should be in writing and a copy placed in the HOME contractor’s property acquisition file.
- The HOME contractor should have the appraisal reviewed by a qualified reviewing appraiser. The review must be in writing, and should focus on determining the adequacy of the initial appraiser’s supporting data and opinion of fair market value.

d. **Preparing An Offer:** When the HOME contractor has decided to acquire a property, it must establish an amount of just compensation based on the appraisal(s), and must provide the owner with a written “Statement of Basis for Determining the Just Compensation” (a sample is included in Appendix VIII-D). The statement must be placed in the HOME contractor’s project acquisition file and must include the following:

- A legal description of the property;
- A general statement of the public use for which the property is to be acquired;
- Interest to be acquired;
- An inventory, which identifies the buildings, structures, fixtures, and other improvements;

- The amount of the offer and statements to the effect that is the amount is believed by the agency to be just compensation for the property and it is not less than the fair market value of the property. This amount disregards any increase or decrease in the fair market value attributable to the project for which the property was acquired with the exception of physical deterioration within the control of the owner, and it does not include any consideration or allowance for relocation costs.
- If only a portion of the parcel is to be acquired, a written statement with a promise to pay just compensation for damages and benefits to the remaining portion.

It is recommended that the statement should also include the following additional items:

- The correct zoning for the property; the highest and best use of the property determined by the appraisal; a definition of fair market value;
- A brief explanation of the principal appraisal techniques used in appraising the property;
- Copies of contracts to sell, purchase, or lease to support the determination of value, which should also include the following:
  - Names and business or residence addresses of the parties to the transactions;
  - The price; and
  - Significant terms of the transaction.

**Note:** If the information presented by the owner(s) or a material change in the character of condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal, the HOME contractor is required to have the appraisal updated or obtain a new appraisal.

- e. **Making An Offer:** The next step in acquiring the property is making a written purchase offer to the owner and negotiating the final sale, which begins the displacement process.

As soon as feasible after establishing just compensation, the HOME contractor issues the following items to the owner which must be documented upon receipt:

- A written “Offer To Purchase” form (see Appendix VIII-E).

- A written “Statement of the Basis for Determining the Just Compensation” which must include specific information such as:
  - The amount offered as just compensation,
  - The description and location of the real property, and
  - An identification of any buildings or structures, which are considered part of the real property for which the offer of just compensation is made.
- If the property is tenant or owner-occupied, the HOME contractor must issue a written “Notice of Intent to Displace”, usually within 30 days of the date specified for the initiation of negotiation.

The next step involves the preparation and execution of the 1) contract of sale, 2) transfer of documents, and 3) reimbursement of owner’s incidental expenses. If the sale cannot be negotiated, initiation of condemnation proceedings should begin, or the HOME contractor may decide not to acquire the property. If it is decided not to acquire the property, then a letter of “Intent Not to Acquire” must be issued (sample letter included in Appendix VIII-F).

If negotiations are successful, a contract of sale should be prepared, executed, and transfer of documents secured. The HOME contractor must reimburse the owner to the extent it deems “fair and reasonable” for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded messages).

At the conclusion of settlement, the HOME contractor should provide the owner with a “Statement of Settlement Costs” which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. If a title or escrow company is used, the standard settlement statement form is acceptable. The Statement of Settlement Costs should be dated and certified as true and correct by the person handling the transaction. A receipt for purchase price should be obtained by the HOME contractor and placed in the acquisition file.

If the HOME contractor decides not to acquire the property after it has forwarded a “Notice of Decision to Appraise” or has made a firm offer to acquire, the HOME contractor must notify the owner and tenants, in writing and by registered mail, return receipt requested, of its intention not to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within 10 business or calendar days following the HOME contractor’s decision not to acquire the property.

**Note:** Condemnation can be substantially more expensive than negotiations. The HOME contractor is required to pay the amount established by the court. It is advisable to avoid condemnation and secure a successful acquisition by negotiation when at all possible.

## **Annual Report on Relocation and Real Property Acquisition Requirements**

HOME contractors are required to submit a Report on Relocation and Real Property Acquisition each year for activities involving acquisition or permanent relocation. The report covers the period of July 1 through June 30 and is due by July 15.

## **Required Recordkeeping And Files**

At the close of the acquisition, the HOME contractor should review the project's acquisition file to ensure that it contains all required documentation. The file must be kept for at least three years.

## **Common Problems**

The following are common problems encountered by HOME contractors that may impede a successful relocation process:

- Acquisition of property without following acquisition policies;
- Failure to invite the property owner to accompany the appraiser during the property inspection;
- Failure to furnish the owner with a notice of land acquisition procedures;
- Failure to document the receipt of all notices to the displaced person(s);
- Failure to notify the owner(s) and tenant(s) within 10 days if the HOME contractor decides not to acquire a property;

## **The Department's Role**

Department staff is available to provide technical assistance for designing and implementing a real property acquisition component of a Contractor's program. The Department staff will be monitoring each Contractor's program to ensure compliance with the Federal Uniform Relocation Act. Monitoring will consist of reviewing project files for accuracy of payments, adequacy of documentation and timeliness of activities. Depending on the severity of the noncompliance, actions taken by the Department may include debarring the Contractor, suspending the Contractor, and/or loss of performance points the next time the Contractor applies for HOME funds.

## **Additional Resources**

Federal CDBG Regulations, Relocation, Displacement and Acquisition: Final Rule [Section 104(d)], 24 CFR 570, dated July 18, 1990 [Section 103(d)]

Federal Uniform and Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice (URA), 49 CFR Part 24, dated March 2, 1989 (URA).

HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition.

Information on Tenant Assistance, Relocation and Real Property Acquisition from the HUD 1378 Handbook can be accessed at <http://www.hudclips.org>

<http://www.fhwa.dot.gov/realestate/aqrpde.htm>